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THE GRYPHON SOLUTIONS, LLC;
MICHAEL CHARLES BRKICH;
JAY MICHAEL TENENBAUM; and
IAN NATHAN WILLENS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

ELIZABETH PALISOC AGNIR,

Plaintiff,

v.

THE GRYPHON SOLUTIONS, LLC a
California Limited Liability Company;
MICHAEL CHARLES BRKICH,
individually and in his official capacity; JAY
MICHAEL TENENBAUM, individually
and in his official capacity; IAN NATHAN
WILLENS, individually and in his official
capacity,

Defendants.

CASE NO. 5:12-CV-04470-LHK

**AMENDED STIPULATION AND
ORDER GRANTING LEAVE TO
FILE FIRST AMENDED
COMPLAINT AND WITHDRAWING
DEFENDANTS' MOTION TO
DISMISS AND MOTION TO STRIKE**

THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. On August 24, 2012, Plaintiff filed her Complaint (Doc. 1) in this case alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788 *et seq.* Plaintiff's Complaint also seeks actual damages, statutory damages, declaratory and injunctive relief, attorney's fees, and cost pursuant to Cal. Civil Code §§ 1798.92-1798.97.

2. On September 24, 2012, Defendants filed their Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted. (Doc. 16).

3. On September 25, 2012, Defendants filed their Motion to Strike (Doc. 17).

4. Defendants motions were originally set for hearing on January 31, 2013, at 1:30 p.m. before the Honorable Lucy H. Koh.

5. The parties previously requested a modified the briefing schedule requiring briefs to be filed as follows:

a. Plaintiff's opposition briefs shall be filed on or before October 23, 2012.

b. Defendants' reply briefs shall be filed on or before November 6, 2012.

6. Plaintiff filed her Opposition to the Motion to Dismiss (Doc. 32-1) and Opposition to the Motion to Dismiss (Doc. 26) on October 22, 2012.

7. Since that Stipulation and Order modifying the briefing schedule, and the filing of Plaintiff's oppositions, new counsel for Defendants have been substituted in place of former counsel and the Court continued the hearing dates for both motions *sua sponte* to April 18, 2013 at 1:30 p.m.

8. In the course of preparing reply memorandums in support of Defendants' motions, Defendants' new counsel identified an alternative basis on which to dismiss Plaintiff's claims that was not advanced in the moving papers.

9. Counsel discussed several methods of addressing the issue and the timeliness of the contemplated reply memorandums while preserving the rights of the parties and concluded that the most efficient manner to fairly address the issue is to allow Plaintiff to amend her complaint under Federal Rules of Civil Procedure 15(a)(2), then allow Defendants to respond to the First Amended Complaint.

10. As authorized by Federal Rule of Civil Procedure 15(a)(2), Plaintiff may file and serve her First Amended Complaint.

11. Plaintiff shall file and serve her First Amended Complaint on or before March 4, 2013.

12. Defendants shall be allowed fourteen (14) calendar days from the date of service of the First Amended Complaint in which to file their responsive pleadings. Any opposition and

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1 reply memorandums shall be filed and served as required by the Federal Rules of Civil
2 Procedure.

3 13. Defendants' response to the First Amended Complaint may include a motion to
4 strike based on California Code of Civil Procedure section 425.16, the "anti-SLAPP" statute, if
5 Defendants deem it warranted. Plaintiff waives any objection related to the timeliness of any
6 anti-SLAPP motion as long as it is made within 14 days of service of the First Amended
7 Complaint as discussed below.

8 14. Plaintiff's amendment will be viewed for all purposes related to Defendants'
9 original Section 425.16 motion, as if it were timely made pursuant to Rule 15(a)(1)(B) after the
10 filing of Defendants' original responsive pleadings. By this stipulation, Defendants have not
11 waived any rights they may have under any statute.

12 15. Defendants' motion to strike and motion to dismiss currently set for hearing on
13 April 18, 2013, at 1:30 p.m. are withdrawn and the hearing date vacated.

14 IT IS SO STIPULATED.

15
16 CONSUMER LAW CENTER, INC.

17
18 Dated: February 20, 2013

17 /s/ Fred W. Schwinn
18 By: _____
19 FRED W. SCHWINN
20 Attorneys for Plaintiff,
21 ELIZABETH PALISOC AGNIR

22
23 COLEMAN & HOROWITT, LLP

24
25 Dated: February 20, 2013

22 /s/ Keith M. White
23 By: _____
24 KEITH M. WHITE
25 Attorneys for Defendants,
26 THE GRYPHON SOLUTIONS, LLC;
27 MICHAEL CHARLES BRKICH; JAY
28 MICHAEL TENENBAUM; and IAN
NATHAN WILLENS

ORDER

The Court, having reviewed the stipulation of the parties and finding that good cause exists, it is hereby **ORDERED**:

1. Plaintiff shall file and serve her First Amended Complaint on or before March 4, 2013.

2. Defendants shall be allowed fourteen (14) calendar days from the date of service of the First Amended Complaint in which to file their responsive pleadings. Any opposition and reply memorandums shall be filed and served as required by the Federal Rules of Civil Procedure.

3. Defendants' response to the First Amended Complaint may include a motion to strike based on California Code of Civil Procedure section 425.16, the "anti-SLAPP" statute, if Defendants deem it warranted. Plaintiff waives any objection related to the timeliness of any anti-SLAPP motion as long as it is made within 14 days of service of the First Amended Complaint as discussed below.

4. Plaintiff's amendment will be viewed for all purposes related to Defendants' original Section 425.16 motion, as if it were timely made pursuant to Rule 15(a)(1)(B) after the filing of Defendants' original responsive pleadings. By this stipulation, Defendants have not waived any rights they may have under any statute.

5. Defendants' motion to strike and motion to dismiss currently set for hearing on April 18, 2013, at 1:30 p.m. are withdrawn and the hearing date vacated.

Dated: February 21, 2013



UNITED STATES DISTRICT JUDGE